APPENDIX.

EXTRACTS FROM OHIO CONSTITUTION AND STATUTES RELIED UPON.

Constitution.

Article II, § 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, in so far as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than

fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution. (As amended. Effective Jan. 1, 1924. 110 O. L., 631.)

General Code of Ohio.

(Where the extract from the section quoted includes an amendment which became effective pending proceedings before the Supreme Court of Ohio, or pending the claim proceedings before the Industrial Commission, the new matter is shown in italics and the matter stricken out is in brackets; none of these affect the questions involved herein.)

§ 871-12. *Industrial Commission shall supersede the state liability board of awards; powers and duties.* The Industrial Commission shall supersede and perform all of the duties of the state liability board of awards, provided in and by the act of the general assembly of the State of Ohio passed the thirty-first day of May, 1911 (102 O. L. 524) G. C. § 1465-37 to 1465-81 entitled, "An act to create a state insurance fund for the benefit of injured and the dependents of killed employes and to provide for the administration of such fund by a state liability board of awards," and all amendments to said act, and by the act of the general assembly passed February twenty-sixth, 1913, approved March 14, 1913, and filed in the office of the secretary of state March 17, 1913, entitled "An act to further define the powers, duties and jurisdiction of the state liability board of awards with reference to the collection, maintenance and disbursement of the state insurance fund for the benefit of injured, and the dependents of killed employes and requiring contribution thereto by employers, and to repeal sections 1465-42, 1465-43, 1465-45 1465-46, 1465-53, 1465-54, 1465-55, 1465-56, 1465-57, 1465-58,

1465-59, 1465-60, 1465-61, 1465-62, 1465-63, 1465-64, 1465-65, 1465-66, 1465-67, 1465-68, 1465-69, 1465-70, 1465-71, 1465-72, 1465-73, 1465-74, 1467-75, [1465-75], 1465-76, 1465-77, 1465-78, 1465-79, of the General Code" [G. C. §§ 1465-41a and 1465-42, 1465-43, 1465-45, 1465-46 and 1465-53 to 1465-106, which were 103 v. 72, §§ 1 to 59 inclusive] on and after the first day of September, 1913; and said commission on and after the first day of September, 1913, as successor of the said liability board of awards, shall be vested with and assume and exercise all powers and duties cast by law upon said liability board of awards, and on the first day of September, 1913, the term of office of the members constituting the said state liability board of awards of Ohio shall cease and terminate, together with all rights, privileges and emoluments connected therewith. (103 O. L. 97, 656 § 12.)

§ 871-38. *Dissatisfied employer may commence action to set aside, vacate or modify an order.* Any employer or other person in interest being dissatisfied with any order of the commission may commence an action in the Supreme Court of Ohio, against the commission as defendant to set aside, vacate or amend any such order on the ground that the order is unreasonable or unlawful and the Supreme Court is hereby authorized and vested with exclusive jurisdiction to hear and determine such action. The commission shall be served with summons as in other civil cases * * *. (103 O. L. 95, 107 § 38.)

§ 1465-37. There is hereby created a state liability board of awards, to be composed of three members, not more than two of whom shall belong to the same political party, to be appointed by the governor, within thirty days after the passage of this act, * * * (102 O. L. 524, § 1.)

§ 1465-53. The industrial commission of Ohio shall classify occupations or industries with respect to their degree of hazard, and determine the risks of the different classes and fix the rates of premium of the risks of the same, based upon the total payroll in each of said classes of occupation or industry sufficiently large to provide an adequate fund for the compensation provided for in this act, and to maintain a state insurance fund from year to year, provided, however, that where the payroll cannot

be obtained or, in the opinion of the commission, is not an adequate measure for determining the premium to be paid for the degree of hazard, the commission may determine the rates of premium upon such other basis, consistent with insurance principles, as shall be equitable in view of the degree of hazard, and whenever in this sub-chapter reference is made to payroll or expenditure of wages with reference to fixing premiums such reference shall be construed to have been made also to such other basis for fixing the rates of premium as the commission may in the foregoing instances determine. [* * * * *.] (As amended 119 O. L. 565; 120 O. L. 449, 450, Eff. 6-15-43.)

§ 1465-54. It shall be the duty of the industrial commission of Ohio, in the exercise of the powers and discretion conferred upon it in the preceding section, ultimately to fix and maintain, for each class of occupation, or industry, the lowest possible rates of premium consistent with the maintenance of a solvent state insurance fund and the creation and maintenance of a reasonable surplus, after the payment of legitimate claims for injury and death that it may authorize to be paid from the state insurance fund for the benefit of injured and the dependents of killed employes; and, in order that said object may be accomplished, said commission shall observe the following requirements in classifying occupations or industries and fixing the rates of premium for the risks of the same:

1. It shall keep an accurate account of the money paid in premiums by each of the several classes of occupations or industries, and the losses on account of injuries and death of employes thereof, and it shall also keep an account of the money received from each individual employer and the amount of losses incurred against the state insurance fund on account of injuries and death of the employes of such employer.

2. Ten percent of the money that has heretofore been paid into the state insurance fund and ten percent of all that may hereafter be paid into such fund shall be set aside for the creation of a surplus until such surplus shall amount to the sum of one hundred thousand dollars ($100,000.00) after which time, whenever necessary in the judgment of the industrial commission to guarantee a sol-

vent state insurance fund, a sum not exceeding five per cent of all the money paid into the state insurance fund shall be credited to such surplus fund. On the first day of July, 1917, and annually thereafter a revision of rates shall be made in accordance with the latest five calendar year experience of said commission in the administration of the law as shown by the accounts kept as provided herein; and said commission shall adopt rules governing said rate revisions, the object of which shall be to make an equitable distribution of losses among the several classes of occupation or industry, which rules shall be general in their application.

3. The industrial commission of Ohio shall have the power to apply that form of rating system which, in its judgment, is best calculated to merit or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident experience, and to encourage and stimulate accident prevention; shall develop fixed and equitable rules controlling the same, which rules, however, shall conserve to each risk the basic principles of workmen's compensation insurance. (As amended 119 O. L. Effective September 4, 1941.)

§ 1465-60. The following shall constitute employers subject to the provisions of this act:

1. * * *

2. Every person, firm and private corporation, including any public service corporation, that has in service three or more workmen or operatives regularly in the same business, or in or about the same establishment under any contract of hire, express or implied, oral or written * * *. (As amended 116 O. L. 56, Eff. 7-4-35.)

§ 1465-68. Every employee mentioned in section 1465-61, who is injured, and the dependents of such as are killed in the course of employment, wheresoever such injury has occurred, provided the same was not purposely self-inflicted, on and after January 1st, 1914, shall be entitled to receive, either directly from his employer as provided in section 1465-69, or from the state insurance fund, such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services

and medicines, and such amount of funeral expenses in case of death as provided by sections 1465-79 to 1465-87 inclusive.

* * * * *

The term "injury" as used in this section and in the workmen's compensation act shall include any injury received in the course of, and arising out of, the injured employee's employment. (As amended 119 O. L. 565, 567, § 1, Effective September 4, 1941.)

§ 1465-69. Except as hereinafter provided, every employer mentioned in subdivision 2 of section 1465-60, General Code, *and publicly owned utility* shall, in the month of January, 1914, and semi-annually thereafter, pay into the state insurance fund the amount of premium determined and fixed by the industrial commission of Ohio for the employment or occupation of such employer the amount of which premium to be so paid by each such employer to be determined by the classifications, rules and rates made and published by said commission; and such employer shall semi-annually thereafter pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, * * *. [* * * * * *]

Provided, however, that as to all employers * * * who may first become subscribers to said fund in any other month than January or July, the foregoing provisions for the payments of such premiums in the month of January, 1914, and semi-annually thereafter shall not apply, but such semi-annual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. And provided further, that such employers *and publicly owned utilities* who will abide by the rules of the industrial commission of Ohio and as may be of sufficient financial ability to render certain the payment of compensation to injured employes or the dependents of killed employes, and the furnishing of medical, surgical, nursing and hospital attention and services and medicines, and funeral expenses equal to or greater than is provided for in sections 1465-78 to 1465-89, General Code, and who do not desire to insure the payment thereof or indemnify them-

selves against loss sustained by the direct payment thereof, may, upon a finding of such fact by the industrial commission of Ohio, elect to pay individually such compensation, and furnish such medical, surgical, nursing and hospital services and attention and funeral expenses directly to such injured or the dependents of such killed employes; and the industrial commission of Ohio may require such security or bond from said employers *and publicly owned utilities* as it may deem proper, adequate and sufficient to compel, or secure to such injured employes, or to the dependents of such employes as may be killed, the payment of the compensation and expenses herein provided for, which shall in no event be less than that paid or furnished out of the state insurance fund, in similar cases, to injured employes or to dependents of killed employes, whose employers contribute to said fund, *except* when an employe of *such* employer, who has suffered the loss of a hand, arm, foot, leg, or eye, prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of any injury sustained in the course of and arising out of his employment, the compensation to be paid by such employer *and publicly owned utility* shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the industrial commission of Ohio, out of the surplus created by section 1465-54 of the General Code. * * * and said commission shall make and publish rules and regulations governing the mode and manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to permit such election by such employers *and publicly owned utilities*, which rules and regulations shall be general in their application, one of which rules shall provide that all employers *including publicly owned utilities*, electing directly to compensate their injured and the dependents of their killed employes as hereinbefore provided, shall pay into the state insurance fund such amount or amounts as are required to be credited to the surplus in paragraph No. 2 of section 1465-54, General Code. The industrial commission of Ohio may at any time change or modify its findings of fact herein provided for, or revoke the right of such employer *or publicly owned utility* to pay compen-

sation direct, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of the law in reference to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured and the dependents of killed employes. (As amended 120 O. L. 194, 195. Eff. 8-14-43.)

§ 1465-69a. It shall be the duty of each member of a firm, and of the president, secretary, general manager or managing agent of each private corporation, including any public service corporation mentioned in section 1465-60 of the General Code *or publicly owned utility* to cause such firm or corporation to comply with the provisions of Section 1465-69 of the General Code, and every person mentioned in said Section 1465-60 and members of such firms and said officers of such corporations *or publicly owned utilities* referred to in this section who neglect or fail to comply with the provisions of said Section 1465-69 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars and, where the failure is wilful, imprisoned not more than ninety days, and shall pay the costs of prosecution. Such fine when collected shall be paid to the industrial commission and placed in *the* state insurance fund. (As amended 120 O. L. 194, 196, Eff. 8-14-43.)

§ 1465-70. Employers who comply with the provisions of Section 1465-69 shall not be liable to respond in damages at common law or by statute, for any injury, disease or bodily condition, whether such injury, disease or bodily condition is compensable under this act or not, or for any death resulting from such injury, disease or bodily condition, of any employe, wherever occurring, during the period covered by such premium so paid into the state insurance fund, or during the interval of time in which such employer is permitted to pay such compensation direct to his injured or the dependents of his killed employes as herein provided.

* * * * *

(As amended 118 O. L. 422, 426, Eff. 5-26-39.)

§ 1465-72. The state liability board of awards shall disburse the state insurance fund to such employes of employers as have paid into said fund the premiums applicable to the classes to which they belong, who have been injured in the course of their employment, wheresoever such injuries have occurred, and which have not been purposely self-inflicted, or to their dependents in case death has ensued. All employers electing directly to compensate their injured employes, in compliance with this act, shall pay to such injured employes, or to the dependents of employes who have been killed in the course of their employment, unless such injury or death of such employe has been purposely self-inflicted, the compensation, and shall furnish such medical, surgical, nurse and hospital care and attention or funeral expenses as would have been paid and furnished by virtue of this act under a similar state of facts, by the state liability board of awards out of the state insurance fund, in case said employer had paid the premium provided by this act, into said fund.

* * * * *

And such payment or payments to such injured employes, or to their dependents in case death has ensued, shall be in lieu of any and all rights of action whatsoever against the employer of such injured or killed employes. (103 O. L. 72, 82, § 25.)

§ 1465-73. Employers mentioned in subdivision two of Section thirteen hereof (1465-60), who shall fail to comply with the provisions of Section twenty-two hereof, (1465-69), shall not be entitled to the benefits of this act during the period of such non-compliance, but shall be liable to their employes for damages suffered by reason of personal injuries sustained in the course of employment caused by the wrongful act, neglect or default of the employer, or any of the employer's officers, agents or employes, and also to the personal representatives of such employes where death results from such injuries, and in such action the defendant shall not avail himself or itself of the following common law defenses:

The defense of the fellow-servant rule, the defense of the assumption of risk or the defense of contributory negligence.

Any such employers shall also be subject to the provisions of the two sections next succeeding. (103 O. L. 72, 82 § 26.)

§ 1465-74. Any employe whose employer has failed to comply with the provisions of section 1465-69, who has been injured or has suffered an occupational disease in the course of his employment, and which was not purposely self-inflicted, or his dependents in case death has ensued, may, in lieu of proceedings against his employer by civil action in the courts, as provided in section 1465-73, file his application with the commission for compensation and the commission shall hear and determine such application for compensation in like manner as in other claims and shall make such award to such claimant as he would be entitled to receive if such employer had complied with the provisions of section 1465-69, and such employer shall pay such award in the manner and amount fixed thereby or shall furnish to the industrial commission a bond, in such an amount and with such sureties as the commission may require, to pay such employe such award in the manner and amount fixed thereby. In the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, or to furnish such bond, within a period of ten days after notification of such award, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the commission, and the commission shall certify the same to the attorney general who shall forthwith institute a civil action against such employer in the name of the state, for the collection of such award. In such action it shall be sufficient for plaintiff to set forth a copy of the record of proceeding of the commission relative to such claims as certified by the commission to the attorney general and to state that there is due to plaintiff on account of such finding and award of the commission a specified sum which plaintiff claims with interest. A certified copy of such record of proceedings in such claim shall be attached to the petition and shall constitute prima facie evi-

dence of the truth of the facts therein contained. The answer or demurrer to such petition shall be filed within ten days, the reply or demurrer to the answer within twenty days, and the demurrer to the reply within thirty days after the return day of the summons or service by publication. All motions and demurrers shall be submitted to the court within ten days after the same are filed. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order for trial. The cause of action herein provided and the cause of action provided by section 1465-75 may be joined in one action against an employer, and the amount of any premium paid or recovered from such employer for the period not exceeding six months during which such injury or disease, or injury or disease resulting in death, occurred shall be credited against the amount of any judgment for compensation recovered pursuant to the provisions of this section. The amount recovered in such action from such employer shall be paid into the state insurance fund. And any employe whose employer has elected to pay compensation to his injured, or to the dependents of his killed employes in accordance with the provisions of section 1465-69, may, in the event of the failure of his employer so to pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the commission for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses determined; and thereupon like proceedings shall be had before the commission and with like effect as hereinbefore provided.

And the commission shall adopt and publish rules and regulations governing the procedure before the commission provided in this section and shall prescribe form of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action, proceeding or award brought or made against any employer under the provisions of this section, may be compromised by the commission, or such suit, action or proceeding may be prosecuted to final judgment as in the dis-

cretion of the commission may best subserve the interests of the state insurance fund.

A final judgment against the employer recovered in the manner provided herein shall entitle such claimant to the compensation provided by this act for such injury, occupational disease or death and such compensation shall be paid from the surplus created by section 1465-54, and any sum then or thereafter recovered on account of such judgment shall be paid to the commission and credited to such fund as the commission may designate. (As amended 114 O. L., 31. Effective July 8, 1931.)

§ 1465-75. If the industrial commission finds that any person, firm or private corporation, including any public service corporation is, or has been at any time after January 1, 1923, an employer subject to the provisions of paragraph 2 of section 1465-60, it shall determine the period during which he or it was such an employer, which finding and determination shall for all purposes of this act be prima facie evidence thereof. The commission shall forthwith give notice of said action to the employer who shall immediately thereafter furnish the commission with a pay roll covering the period included in said finding, together with an estimated pay roll for six months next succeeding the date of such finding, if such employer is subject to the provisions of paragraph 2 of section 1465-60 on the date of such determination, and shall forthwith either pay into the state insurance fund the amount of premium determined and fixed by the commission for such period or shall comply with the provisions of section 1465-69 with reference to the direct payment of the compensation and benefits provided by this act.

If said employer fails, neglects or refuses to furnish such pay roll and pay the premium for such period or to elect to pay directly such compensation and benefits accruing because of injuries, diseases or deaths occurring during such period, as provided by section 1465-69 within ten days after receiving such notice, the commission shall then determine the amount of premium due from said employer for the period the commission found him or it to be subject to this act, including the amount of premium to be paid by him or it for the next succeeding six months, if such em-

ployer is subject to the provisions of paragraph 2 of section 1465-60 on the date of such determination and shall notify said employer of the amount thereof and shall order the same paid into said fund. If said amount is not paid within ten days after receiving such notice, the commission shall certify the same to the attorney general, who shall forthwith institute a civil action against such employer in the name of the state for the collection of such premium. In such action it shall be sufficient for plaintiff to set forth a copy of the finding of the commission relative to such employer as certified by the commission to the attorney general and to state that there is due to plaintiff on account of such finding of the commission a specified sum which plaintiff claims with interest. A certified copy of such finding relative to such employer shall be attached to the petition and shall constitute prima facie evidence of the truth of the facts therein contained. The answer or demurrer to such petition shall be filed within ten days, the reply or demurrer to the answer within twenty days, and the demurrer to the reply within thirty days after the return day of the summons or service by publication. All motions and demurrers shall be submitted to the court within ten days after the same are filed. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order of trial.

Unless said employer shall, within the ten days last aforesaid, execute a bond to the state in double the amount so found and ordered paid by the commission, with sureties to the approval of the commission, conditioned that he or it will pay any judgment and costs rendered against him or it for said premium, the court at the time of the filing of the petition, and without notice, shall appoint a receiver for the property and business of such employer, in this state, with all the powers of receivers in other cases, who shall take charge of all said property and assets of the defendant and administer the same under the orders of the court.

If upon final hearing of said cause it is found and determined that the defendant is subject to the provision of paragraph 2 of section 1465-60, the court shall render judgment against said defendant for the amount of premium, provided to be paid by such employer for such period under

the provisions of this act, with interest from the date of the determination of said amount by the commission, together with costs, which judgment shall be given the same preference as is now or may hereafter be allowed by law on judgments rendered for claims for taxes.

If any employer who has complied with this act shall default in any payment required to be made by him or it to the state insurance fund, for a period of ten days after notice that such payment is due, the same proceedings may be had as in the case of an employer against whom the commission has made a finding as hereinbefore provided.

* * * (As amended 114 O. L., 33. Eff. 7-8-31.)

§ 1465-90. The commission shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions thereon shall be final, except as provided in this section. The commission shall definitely and specifically pass upon each and every issue raised in the claim, necessary for a proper and complete decision thereon. In all claims for compensation on account of injury, or death resulting therefrom, if the commission denies the right of the claimant to receive compensation or to continue to receive compensation the order of the commission shall state the ground or grounds on which the claim was denied; and if the claim was denied on any of the following grounds: that the injury was self-inflicted; that the injured person was not an employee; that the injury did not occur in the course of or arise out of the employment; that the claimant's disability is not the result of the injury; that the claimant, having received compensation for the period of temporary total disability and having received the maximum amount of compensation for temporary partial disability as provided in this act, and having engaged in no gainful occupation for the period of four years prior to the decision of the commission, during which time compensation has been payable to such claimant, is not permanently and totally disabled as a result of the injury; that the death did not result from the injury; that the claimant was not legally or actually dependent upon the decedent; or that the employer was not amenable to law; then the claimant may within thirty days after the receipt of notice of such finding of the commission, file an application with the com-

mission for a rehearing of his claim, whereupon the former action of the commission thereon shall be vacated. If the order of the commission does not state the ground or grounds on which the claim was denied, or if the order of the industrial commission is not definite in such regards, the claimant may maintain an action in mandamus against the commission in the supreme court of Ohio, and, if the final order in such proceedings directs the commission to state the ground or grounds of its order or make the order definite as to the ground or grounds thereof, then there shall be taxed as part of the costs assessed against the commission an attorney fee in the amount of $250.00. The commission shall fix a date for rehearing of such claim and give the claimant and his employer at least one week's prior notice thereof; at said hearing, if the claimant is asking for compensation from the state fund, the attorney general, or any one or more of his assistants or special counsel who have been designated by him to act as attorney to the commission, may represent the state fund, and in the absence of the attorney general or his designated assistants or special counsel, the commission shall elect one or more of the attorneys in the employ of the industrial commission to represent the state fund. Such hearing shall be had and the evidence for and against the allowance of the claim submitted as in the trial of civil actions. The commission shall pass upon the admissibility of evidence, but either party may at the time make objection and take exception to the rulings of the commission thereon, and if the commission refuses to admit any evidence, the party offering the same shall state the nature of such evidence and the matter which such party proposes to prove thereby, and such statement shall be made a part of the record of such rehearing. Such rehearing may be continued from time to time.

If the commission, after such hearing, denies the right of the claimant to receive or to continue to receive compensation it shall state the ground or grounds on which the claim was denied and if the claim was denied on any of the grounds hereinabove specifically stated then the claimant, within sixty days after receipt of notice of such action of the commission, may file a petition in the common pleas court of the county wherein the injury was inflicted, or in the common pleas court of the county wherein the contract

of employment was made in cases where the injury occurs outside the state of Ohio. If the claimant is seeking compensation from the state insurance fund, the defendant in such action shall be the industrial commission and summons shall be issued to the industrial commission and also to the attorney general. If the claimant is seeking compensation from an employer who has qualified to pay compensation direct, as provided by section 1465-69 or from an employer who has failed to comply with this act, the defendant in such action shall be such employer and summons shall issue to such employer. Further pleadings shall be had in accordance with the rules of civil procedure. The attorney general shall designate one or more of his assistants or special counsel to act as counsel for the commission and he shall call upon the prosecuting attorney of the county in which the suit is pending to render such assistance in connection therewith as he, the attorney general, may deem necessary; and if, for any reason at any stage of such proceeding, the attorney general, his assistants or special counsel do not appear for or represent and defend the commission, the commission shall select one or more of the attorneys in the employ of the industrial commission to represent the commission.

Within ten days after the filing of the answer the industrial commission shall certify to such court a transcript of the record of such rehearing, and the court, or the jury, under the instructions of the court, if a jury is demanded, shall determine the right of the claimant to participate or to continue to participate in such fund upon the evidence contained in such record and no other evidence; but the court may exclude from evidence such portions of the transcript which are not competent, material or relevant evidence and to which objection was made * * * at such rehearing before the commission and may admit in evidence such competent, material or relevant evidence as was excluded by the commission at such rehearing, over the objection * * * of the party offering the same. If the finding of the court or the verdict of the jury is in favor of the claimant's right to participate or to continue to participate in such fund the court shall certify such finding or verdict to the industrial commission and the commission shall thereupon order compensation to be paid in the manner pro-

vided by this act for the payment of other awards, and such certificate of the court shall be entered in the records of judgments of such court and shall for the purpose of error proceedings, be in lieu of final judgment in such cause but notwithstanding the judgment rendered, the commission may modify or revoke a finding that the claimant is permanently and totally disabled if it finds on evidence that the claimant is thereafter capable of doing work.

No such certificate shall be placed upon the record of judgments until such certificate has been submitted to the attorney general and no entry except an entry setting forth the trial of the case and the verdict of the jury shall be placed upon the record of the court until such entry has been so submitted.

The cost of any legal proceedings, authorized by this section, including an attorney's fee to the claimant's attorney to be fixed by the trial judge, shall be taxed against the unsuccessful party; provided, however, that such attorney fee shall not exceed twenty per cent of any award up to the sum of five hundred dollars, and 10 per cent on all amounts in excess thereof, but in no event shall such fee exceed the sum of five hundred dollars. Either party in any of such proceedings shall have the right to prosecute error as in the ordinary civil cases, *provided that in any such proceedings the transcript of the record of rehearing before the industrial commission need not be rewritten in the bill of exceptions but the transcript of said record may be attached to and made a part of said bill of exceptions and the rulings of the court with respect to exclusion or admission of evidence shall be shown on the margin of the pages of said transcript on which objections and motions appear.* Such right of rehearing before the commission and of appeal from the decision of the commission on such rehearing where such decision denies compensation to a claimant on the grounds hereinbefore specified, shall apply to a claimant in cases in which an employer is a contributor to the state insurance fund or has elected to compensate his employees directly under the provisions of section 1465-69, or has failed and neglected to comply with the provisions of section 1465-69. (As amended 120 O. L. 449, 459. Eff. 6-15-43.)